IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 417 OF 2006

Bhikoba Dhondiba Salunke ..Appellant

versus

Nivrutti Laxman Salunke & Anr. ..Respondents

Mr. Sugandh B. Deshmukh for the Appellant.

Mr. Sandesh Patil i/b. Mr. Vikas Mahangare for the Respondent No.1.

CORAM : S. J. VAZIFDAR, J.

DATE : 11TH SEPTEMBER, 2007

P.C.

1. The Second Appeal does not warrant admission as it raises no question of law on the record as it stands.

2. The Respondent / Plaintiff had filed the suit initially only for injunction. Thereafter, by an amendment, the Respondent / Plaintiff claimed possession on the ground that during the subsistence of a restraint order the Appellant illegally entered into possession.

3. It is true that both the Courts below have come to the conclusion that the Appellant was in possession prior to the suit being filed. However, it is important to note that the amendment was not challenged.

4. Before the First Appellate Court the only contention was that the Plaintiff had not proved his title. Further it appears that the Appellant/ Defendant sought to contend that the title to the suit property vested in him. The Respondent / Plaintiff succeeded in establishing his title to the suit property.

5. Added to this, is the fact that the Appellant / Defendant had not set up any other right in its Written Statement such as of tenancy or an irrevocable licence.

6. It was not contended before the First Appellate Court that there was no averment that the Defendant was in illegal possession. The Courts below cannot be faulted therefore for having decreed

the suit for possession. The only defence viz. of ownership having failed there was no question of the Courts below considering any other defence not pleaded.

7. In the circumstances, there is no warrant for permitting this point to be taken in the Second Appeal inter alia as it would also involve questions of fact.

8. In the circumstances, the Second Appeal is dismissed.

. The stay granted shall continue for a period of twelve weeks to enable the Appellant to challenge this Order.